

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 8/23/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Hillview Water Company, Inc. to borrow \$1,800,000 and issue a note under Sections 816-830 of the Public Utilities Code.

Application 05-01-033
(Filed January 24, 2005)

OPINION APPROVING SETTLEMENT

1. Summary

The Commission approves a Settlement Agreement (Settlement) entered into by Hillview Water Company (Hillview) and the Audit and Compliance Branch of the Commission's Water Division (Audit Branch). Under the Settlement terms, Hillview will refinance outstanding short- and long-term debt but subject to conditions that will minimize the rate impact on customers. The Settlement also resolves the issues deferred from Hillview's recent general rate case (GRC) proceeding.

2. Background

Hillview is a Class C water utility that serves slightly less than 1,400 customers in the foothills of eastern Madera County, southwest of Yosemite National Park.¹

¹ A Class C water utility is one with more than 500 service connections but fewer than 2,000.

At the October 1, 2004 prehearing conference in Application (A.) 04-07-042, Hillview's then-pending GRC, Hillview advised the Commission that it expected soon to file a request for additional financing authority. Hillview's request is the instant application. The parties subsequently reached a settlement in the GRC and the Commission approved it by Decision (D.) 05-07-029. As the parties requested in the GRC settlement, Ordering Paragraph 2 of D.05-07-029 defers resolution of three GRC issues to this proceeding:

- Whether \$69,445, the excess surcharge Hillview has collected to repay the obligation attributable to its Safe Drinking Water Bond Act loan, should be refunded to ratepayers or offset against existing debt.
- Whether \$292,666, the excess surcharge Hillview has collected to repay its outstanding loan from National Bank of Cooperatives (CoBank), should be refunded to ratepayers or offset against existing debt.
- Final reconciliation and appropriate disposition, following audit, of any outstanding loans with shareholders and other third-party lenders.

3. Procedural History

By Resolution ALJ 176-3147 (February 10, 2005), the Commission preliminarily designated this application as a ratesetting proceeding and determined that hearings likely would not be necessary. However, because of the close substantive relationship with the GRC, which had been ordered by the Commission's Investigation (I.) 97-07-018, the assessment changed. On April 26, 2005 an Assigned Commissioner's scoping memo issued, which included a schedule for evidentiary hearing.

Hearing was set for July 8, 2005, at 9 a.m. At the parties' request, hearing was delayed until later that morning so that they could continue settlement negotiations. The parties subsequently advised the ALJ that they had settled all differences between them and then summarized the terms of their agreement.

On August 2, they filed a motion for adoption of their Settlement, which they attached to the motion. To correct several clerical errors, the parties filed and served an amended motion on August 10, 2005.

4. Discussion

4.1 Settlement Criteria

The Settlement, attached to today's opinion as Appendix A, is an uncontested "all-party" settlement with respect to the issues resolved.² In such cases, the Commission applies two standards to evaluate the proposed agreement. The first standard, set forth in Rule 51.1(e) and applicable to both contested and uncontested agreements, requires that the "settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The second standard, articulated in *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992), applies to all-party settlements. As a precondition to approving such a settlement, the Commission must be satisfied that:

- a. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding.
- b. The sponsoring parties are fairly representative of the affected interests.
- c. No settlement term contravenes statutory provisions or prior Commission decisions.

² The Settlement includes two Attachments, A and B. We have included Attachment A as part of the appendix to today's decision, since it is the "List of debt to be paid from the Oro Financial Loan." We have not included Attachment B, which simply shows corrections to the cover page and pages 4 and 5 of Exhibit 1 (Audit Branch's prepared testimony).

- d. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

Hillview and Audit Branch are the only parties to this proceeding and both are signatories to the Settlement. Each party actively participated in all aspects of the proceeding, conducting discovery and developing comprehensive prepared testimony. Settlement discussions did not commence until both parties' positions were public. Hillview was represented by knowledgeable representatives (the utility's president and the certified public accountant whom the utility retains). Audit Branch, which has a mandate to represent ratepayer interests, assigned knowledgeable staff and counsel. We conclude that the affected utility and ratepayers interests were fairly represented. Thus, the Settlement meets the first and second criteria of the all-party settlement guidelines. We examine the third and fourth criteria and the Rule 51.1(e) standard below, in connection with our review of the Settlement, itself.

4.2 Settlement Overview

The Settlement memorializes the agreement between Hillview and Audit Branch that Hillview should be allowed to borrow \$1.8 million from Oro Financial of California, Inc. (Oro Financial) to pay off its existing debt. It also resolves the three issues deferred from the GRC by D.05-07-029 and states, in Paragraph 2.13:

Parties agree that this settlement and the Commission's decision in D.05-07-029 have resolved all remaining unsettled issues and that all issues related to D.03-09-072 to the OII (Oii. [sic] 97-07-018) have been resolved.

The refinancing is necessary because Hillview has insufficient financial resources to meet accumulated, extraordinary short-term debt obligations, and because its low equity position has placed it in technical default with its current lender, National Bank of Cooperatives (CoBank), which will not lend Hillview any more money. Refinancing will permit Hillview to pay off its short-term debt and the CoBank loan. To ensure that the new loan proceeds are used properly, the Settlement requires that the loan be paid through an escrow account and only to satisfy approved business expenses. (Paragraphs 2.2, 2.3.) If any proceeds should remain in escrow, they are to be applied toward capital improvements. (Paragraph 2.4.)

To prevent the refinancing from resulting in higher rates or unnecessarily prolonging collection of the financing surcharge, the Settlement includes several safeguards. One, Hillview will make a good faith effort to negotiate waiver of a prepayment penalty on the CoBank loan, which the Settlement calculates at about \$167,344.³ If no waiver can be obtained, the new loan may be used to pay the prepayment penalty, but the associated costs cannot be paid by the surcharge collected from customers and will not be allowed in setting rates.

(Paragraph 2.7.) Two, if the interest rate Hillview secures on the loan from Oro Financial is higher than the 9.6% applicable to the CoBank loan, Hillview will pay the incremental increase from sources other than the customer surcharge. If Hillview secures a lower rate than 9.6%, the lower rate will be used to calculate

³ Several figures in Attachment A to the Settlement, including the prepayment penalty, represent either estimates, or the sum accrued at the time the table was prepared. With respect to these items, it is not yet known precisely what final amounts will be owed. In contrast, all figures in Attachment A to the Settlement that appear in bold type are actual amounts.

the surcharge going forward. (Paragraph 2.11.) Three, Hillview will not pay a dividend to shareholders for at least three years after the issuance of today's decision. (Paragraph 2.5.)

Finally, the Settlement resolves the three matters deferred to this proceeding by D.05-07-029. The parties agree that Hillview may use the new loan to repay \$69,445 to the Safe Drinking Water Bond Act surcharge account (for use in repayment of that loan), thereby resolving what has been referred to elsewhere as an "excess surcharge" matter. (Paragraph 2.9.) They also agree that the excess \$292,666 Hillview has collected under the CoBank surcharge should be used to offset repayment of that loan. (Paragraph 2.8.) And they agree to the "List of debt to be paid from the Oro Financial Loan" (Attachment A to the Settlement), which includes several shareholder and third-party loans previously in dispute between them. (Paragraph 2.10.) In particular, following an audit and further clarification and documentation by Hillview, the Audit Branch now agrees these amounts below are correct and should be paid off through the new loan⁴:

Shareholder loans	\$ 423,829
Short term debt – PAO note #2	\$ 165,243
Short term debt – F & J	\$ 177,586
Short term debt – PAO note #3	\$ 51,091

⁴ The abbreviation "PAO" refers to Peasely, Aldinger & O'Bymachow, An Accountancy Corporation, which has provided various financial and accounting services to Hillview in connection with recent Commission proceedings, as well as the related investigations by the Federal Bureau of Investigation, the California Department of Justice, and the Internal Revenue Service. "F & J" refers to Fulbright and Jaworski, which provided legal services to Hillview in connection with the various investigations.

Accounts payable & accrued interest \$ 73,672

After considering all of the Settlement provisions—those we have highlighted above as well as those we have not—we conclude, on balance, that the Settlement is reasonable in light of the record developed in this proceeding, that it is not adverse to the public interest, and that it should be approved. Thus the Settlement meets the conditions of Rule 51.1(e)

5. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

6. Change in Preliminary Determinations Under Rule 6.5; Comments on Draft Decision

Though an evidentiary hearing was set, because the parties advised the ALJ they had settled this matter, no witnesses were sworn and no examination occurred. Therefore, under Rule 6.5 we change the preliminary determination that hearings are necessary and find that no hearings are necessary.

Accordingly, Pub. Util. Code § 311(g)(3), which does not require a comment period for uncontested matters that pertain solely to water corporations, applies to the draft decision. However, at the request of the ALJ, the draft decision was served on the parties in order to permit comment and ensure the accuracy of the draft. No comments were filed.

Findings of Fact

1. The refinancing is necessary because Hillview has insufficient financial resources to meet accumulated, extraordinary short-term debt obligations and its low equity position has placed it in technical default with its current lender, National Bank of Cooperatives (CoBank), which will not lend Hillview any more

money. Refinancing will permit Hillview to pay off its short-term debt and the CoBank loan.

2. To prevent the refinancing from resulting in higher rates or unnecessarily prolonging collection of the financing surcharge, the Settlement includes several safeguards for ratepayers.

3. The Settlement negotiated by Hillview and Audit Branch resolves all issues between them in this proceeding, including issues deferred by D.05-07-029.

4. Hillview and Audit Branch are fairly reflective of the affected interests in this proceeding.

5. No term of the proposed Settlement contravenes statutory provisions or prior Commission decisions.

6. The Settlement conveys sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

7. The proposed Settlement is unopposed.

Conclusions of Law

1. The uncontested Settlement is reasonable in consideration of the whole record, consistent with law, and in the public interest; it satisfies the requirements of Rule 51(e).

2. The Settlement should be adopted.

3. The preliminary determinations should be changed to state that no hearings are necessary.

4. This decision should be made effective immediately to enable Hillview to implement the Settlement without delay, including the payment of fees required by Pub. Util. Code §§ 1905(b) and 1904.1.

O R D E R

IT IS ORDERED that:

1. The Motion for Adoption of Settlement Agreement, filed on August 2, 2005, is granted and the Settlement Agreement (Settlement), attached to this decision as Appendix A, is approved.

2. Pursuant to the terms of the Settlement, Hillview is authorized to borrow \$1.8 million from Oro Financial of California, Inc. to repay the obligations listed in Attachment A to the Settlement. Hillview shall comply with all the terms of the Settlement.

3. The authority granted in Ordering Paragraphs 1 and 2 shall become effective upon payment of fees prescribed in Pub. Util. Code §§ 1905(b) and 1904.1.

4. The preliminary determinations are changed; no hearings are necessary.

5. Application 05-01-033 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

SETTLEMENT AGREEMENT

[Vieth Appendix A](#)